

## § 80.13

## 44 CFR Ch. I (10–1–15 Edition)

implementation. A pass through of funds from an eligible entity to an ineligible entity must not occur.

(e) *Hazardous materials.* Eligible properties include only those that are not contaminated with hazardous materials, except for incidental demolition and household hazardous waste.

(f) *Open space restrictions.* Property acquired or from which a structure is removed must be dedicated to and maintained as open space in perpetuity consistent with this part.

[72 FR 61743, Oct. 31, 2007, as amended at 74 FR 47481, Sept. 16, 2009]

### § 80.13 Application information.

(a) An application for acquisition of property for the purpose of open space must include:

(1) A photograph that represents the appearance of each property site at the time of application;

(2) Assurances that the subapplicant will implement the project grant award in compliance with subparts C and D of this part;

(3) The deed restriction language, which shall be consistent with the FEMA model deed restriction that the local government will record with the property deeds. Any variation from the model deed restriction language can only be made with prior approval from FEMA's Office of General Counsel;

(4) The documentation of voluntary interest signed by each property owner, which must include that the subapplicant has informed them in writing that it will not use its eminent domain authority for the open space purpose; and

(5) Assurance that the subject property is not part of an intended, planned, or designated project area for which the land is to be acquired by a certain date, and that local and State governments have no intention to use the property for any public or private facility in the future inconsistent with this part;

(6) If the subapplicant is offering prevent value: the property owner's certification that the property owner is a National of the United States or qualified alien; and

(7) Other information as determined by the Administrator.

(b) *Consultation regarding other ongoing Federal activities.* (1) The subapplicant must demonstrate that it has consulted with the United States Army Corps of Engineers (USACE) regarding the subject land's potential future use for the construction of a levee system. The subapplicant must also demonstrate that it has, and will, reject any future consideration of such use if it accepts FEMA assistance to convert the property to permanent open space.

(2) The subapplicant must demonstrate that it has coordinated with its State Department of Transportation to ensure that no future, planned modifications, improvements, or enhancements to Federal aid systems are under consideration that will affect the subject property.

(c) *Restriction on alternate properties.* Changes to the properties in an approved mitigation project will be considered by FEMA but not approved automatically. The subapplicant must identify the alternate properties in the project application and each alternate property must meet eligibility requirements in order to be considered.

[72 FR 61743, Oct. 31, 2007, as amended at 74 FR 47481, Sept. 16, 2009]

### Subpart C—Post-Award Requirements

#### § 80.15 General.

A project involving property acquisition or the relocation of structures for open space must be implemented consistent with the requirements set forth in this subpart.

#### § 80.17 Project implementation.

(a) *Hazardous materials.* The subgrantee shall take steps to ensure it does not acquire or include in the project properties contaminated with hazardous materials by seeking information from property owners and from other sources on the use and presence of contaminants affecting the property from owners of properties that are or were industrial or commercial, or adjacent to such. A contaminated property must be certified clean prior to participation. This excludes permitted disposal of incidental demolition and household hazardous wastes. FEMA